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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. [redacted]

ABRAHAM TEITELBAUM,

Petitioner,

vs.

THE CURTIS PUBLISHING COMPANY, A CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

ABRAHAM TEITELBAUM,
Attorney Pro Se, Petitioner.
30 North La Salle Street,
Chicago 2, Illinois.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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THE CURTIS PUBLISHING COMPANY, A CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Abraham Teitelbaum, respectfully prays that a Writ of Certiorari be issued to review the decision of the United States Court of Appeals for the Seventh Circuit entered on March 1, 1963, 314 Fed. (2nd) 94.

JUDGMENTS AND OPINION OF COURTS BELOW.

The judgment of the District Court for the Northern District of Illinois, Eastern Division was entered on April 11, 1962, based on a verdict by a jury finding the defendant not guilty, and ordering that plaintiff take nothing from the defendant.

The Opinion of the United States Court of Appeals for the Seventh Circuit affirming said judgment was filed on March 1, 1963 and is reported in 314 Fed. (2nd) 94 and appears in the Appendix A of this petition.

JURISDICTION

The jurisdiction of this Honorable Court is invoked under Title 28, United States Code, sec. 1254(1).

STATEMENT OF FACTS

The facts are not disputed.

Petitioner, Abraham Teitelbaum, an attorney and a member of the bar of this Court for over 30 years, filed an action for libel against The Curtis Publishing Company, a Pennsylvania corporation. Petitioner's complaint alleged that in and by an article appearing in the Saturday Evening Post, published by the defendant, on May 7, 1960, defendant maliciously published that plaintiff was a "thug" and a "hoodlum". These words were false and defamatory *per se*, and plaintiff was injured in his reputation.

The answer admitted the publication and the libel. Truth and privilege were claimed as defenses.

The defendant's answers to interrogatories admitted that the defendant made no investigation of the truth of the facts upon which the libel was asserted to have been based.

Dean Jennings, author of the libelous article testified, the article that he wrote was satire, that it was supposed to be sarcasm, and that he made no investigation to determine either the truth or falsity of the facts in the article.

No officer or agent for defendant testified for defendant. It chose to rely upon newspaper articles and a pamphlet to discharge its burden of proof. Over the repeated and strenuous objections of plaintiff, both the newspaper

articles and the pamphlet were erroneously introduced and received in evidence.

Before the close of the case, the plaintiff, a lawyer, petitioner herein, requested leave of the Court to address the jury. His request was denied. After approximately eight hours of deliberation, the jury returned a verdict for the defendant.

QUESTIONS PRESENTED

1. Does "Freedom of the Press" impose as a necessary accompaniment, the reciprocal and equal right of the individual to enjoy "Freedom from the Press"?

2. Does the press enjoy a special privilege to print what it wishes, regardless of its truth or consequences to the individual?

3. Does the plaintiff have the right to address the jury on his own behalf, even though he is represented by counsel?

4. Was the refusal of the Court of Appeals to determine the issues, denial of due process of law?

5. Was petitioner deprived of due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution?

6. Where there is not an iota of evidence to sustain the defense to the admitted libel *per se*, shall the Federal Courts permit the press to go unpunished for wantonly printing that petitioner who is a lawyer and an officer of the Federal Courts for over 30 years be stigmatized as a "Thug," and a "Hoodlum"?

7. In an action for libel, does the law permit the defendant to offer the defenses of truth and privilege, and then to introduce as evidence at the trial, newspaper articles to defeat the action of the plaintiff?

8. In an action for libel, where the defendant has the

burden of proof, can a publication defeat the action by the introduction of various newspapers into evidence, over the timely objections of the plaintiff?

9. Can the words "thug" and "hoodlum" have either an innocent or other than a connotation of lawlessness?

10. Can the defendant discharge its burden of proof by not offering the testimony of any witnesses, but merely by introducing newspaper clippings and pamphlets, over the objections of plaintiff?

11. Where the question of damages is to be determined by the jury, does the trial judge have the power or authority to instruct the jury, if it finds for the plaintiff, to award plaintiff one dollar as compensatory damages?

12. Does the instruction "No. K" of the trial judge to the jury, that if it determines the issues in favor of the plaintiff, that it shall assess plaintiff's compensatory damages at one dollar, usurp the jury's function and deprive plaintiff of his right of trial by jury? This error is admitted by appellee in his brief on page 25 United States Court of Appeals instruction K (Appendix "B").

THE EVIDENCE.

The Court of Appeals affirmed the trial court's judgment, for the defendant, because, as the opinion states, that court was too busy to examine 886 pages of the record. (See Appendix "A".)

It has consistently been the position of petitioner, that the record contains no evidence whatsoever, in all of its 886 pages, that justifies the determination of the issues, for the defendant, in the trial court. In order to show this, the entire record must be scrutinized, for it is not practical to abstract pages of immaterialities, newspapers, and improper evidence. The question remains: Why abstract improper evidence?

In order to assist the Court of Appeals, petitioner furnished on motion made during the argument, with seventeen key assignments of error (see Appendix "B"), whose function was believed, understood and intended to be a compliance with Rule 16(b) of that court. From these points of reference, the Court of Appeals could have determined the position of petitioner: What precedes each of these objections, is evidence improperly admitted by the trial court.

The burden of proof, was upon the defendant, which was not discharged by it, by the introduction of any proper and admissible evidence.

The verdict of the jury in the trial court is supported by no proper evidence. It is a reasonable conclusion, that the jury took the time that it did for its deliberations—eight hours—occupying itself with the reading of newspaper articles, submitted by the defendant, over the objections of the petitioner. And that the verdict of that jury, arrived at in that manner, should be reversed by this Honorable Court.

The paramount question before this Honorable Court, in this petition for review is the petitioner a "thug" and a "hoodlum"? He should not be so stigmatized since he is not a hoodlum or a thug.

PROPOSITIONS OF LAW RELIED UPON.

I.

Freedom From the Press.

Where Newspaper Articles Are Libelous Per Se, the Law Conclusively Presumes Malice in Law, and General Damages Without Proof of Loss or Injury, Are Conclusively Presumed.

John v. Tribune Company, 28 Ill. App. (2d) 300 (1961).

Cavanaugh v. Elliott, 270 Ill. App. 21.

Estill v. Hearst Pub., 186 Fed. (2d) 1017.

Bradley v. Bucky, 366 Ill. App. 569.

Amendment I, U. S. Constitution.

II.

Due Process of Law.

The Rule of Law Is That Words, Written or Oral, Are Actionable Per Se, If They Tend Directly to the Prejudice or Injury of Any Person in His Profession, Trade or Business.

38 Illinois Law and Practice, Sec. 25 Slander and Libel, 378-381.

Macluskey v. McCartney, 324 Ill. App. 498.

Hudson v. Slack Furniture Co., 318 Ill. App. 15.

V and XIV Amendment, U. S. Constitution.

Hutardo v. California, 110 U. S. 516.

III.

It Is No Justification That Defendant Received His Information From a Third Person.

Kolansza v. Allied Printers, 318 Ill. App. 231.

IV.

Newspaper Articles Are Not Evidence of a Fact and Is in Violation of the Best Evidence Rule.

Ogren v. Rockford Star Printing Co., 288 Ill. 405.

V.

Plaintiff as a Lawyer Has the Right to Address Jury at Close of Case, and Denial of Such Right by the Trial Judge Is Reversible Error.

Rule 44(2) Rules of the Supreme Court of the United States.

VI.

There Could Be No Innocent Construction of the Words, "Hoodlum" and "Thug."

Webster New World Dictionary, pages 698, and 1521.

VII.

Webster's Definition of "Thug" and "Hoodlum."

Webster's New World Dictionary, on Page 1521:

"*Thug*" is a member of a former religious organization of India who murdered and robbed in the services of Kali, a god of destruction, hence any assassin, cutthroat or ruffian.

On Page 698:

"*Hoodlum*" is a young rowdy often a member of a gang, street tough or a hooligan.

VIII.

Right to Trial by Jury.

Court Cannot Usurp the Function of the Jury by Ordering $1.00 Compensatory Damages.

VII Amendment to U. S. Constitution.

REASONS FOR ALLOWANCE OF WRIT.

The opinion of the Court of Appeals evades the main issue of the proceeding, giving as its reasons therefor, (a) that Rule 16 (b) of that court has not been followed, (b) and that the Court of Appeals is too busy to read the record.

I.

An examination of the memorandum petitioner filed, points out in addition to the request made, to read the entire record, seventeen *haec verba* excerpts from the record, upon which errors were assigned. That memorandum does show at least seventeen "parts of the record upon which errors were assigned." The opinion avoids making any decision of the main issue of the proceeding. Petitioner contends that he was denied due process of law.

II.

The opinion begs off reading the record, consisting of 886 pages, because of "an inadequate appendix setting forth the proceedings and the evidence." This statement

overlooks the existence of seventeen references to the record, and references to pertinent facts set forth in appellant's brief, which petitioner believed was sufficient to determine appeal.

It is true that the record consists of 886 pages, which were before that court and available to it. Petitioner extracted seventeen excerpts for the examination of that court, in order that it might be able to determine that each and every one of the newspaper articles and pamphlets permitted to be introduced into evidence by the trial court, had been erroneously admitted into evidence. To abstract the improper evidence introduced *i.e.*, newspaper articles and pamphlets, would have required the reproduction of each, every and all of the newspaper articles and pamphlets, in *extenso*. The result would have been equal in length, as to the record, which the opinion says that the court had not the time to read.

III.

Petitioner is an officer of this Honorable Court. The words "hoodlum" and "thug" can have no innocent construction.

IV.

In the opinion of the Court of Appeals appears the libel complained of by petitioner. It was published to about 15,000,000 readers. Although defendant claimed it to be sarcasm and satire, nowhere is there any hint that the article is not factual and to be so understood.

V.

It is a part of the tradition of the law, that "trial by newspaper" is to be abhorred. And yet, herein is a glaring example of a step beyond that: newspaper articles

which are criticized for attempting to influence the trial of cases, are herein given dignity as evidence. The unacceptable, excoriated and unthinkable, has now become, not only worthy of credence, but trustworthy, accurate and acceptable as evidence in a jury trial!

VI.

The opinion of the Court of Appeals states:

> "In the absence of an adequate appendix setting forth the proceedings and evidence in the district court, we are constrained by the heavy and increasing business in this court to refuse to search the record, which consists of 886 pages, in order to find whether plaintiff is entitled to a reversal of the judgment of this district court. For that reason that judgment is affirmed." (Appendix "A".)

It is well to advert to the principle of law that has been overlooked by that court in that opinion: the burden of proof was upon the defendant and it was defendant's duty to discharge it. Thus, although defendant had the burden of proof, it brought no record to the Court of Appeals.

Plaintiff tried to fairly indicate this to the Court of Appeals, by his request that it read the record in order that it might convince itself that there was no iota of evidence in the record to sustain the position of the defendant. Since defendant failed to do so, the verdict of the jury is supported by no evidence.

VII.

> "So, on the other hand, in an action for defamation ('false words,' in the old nomenclature), it might have been supposed on other analogies that to the plaintiff it would fall to prove the falsity of the defendant's utterance; yet as a matter of fairness, it has in fact been put upon the defendant to prove the truth of his

utterances." "Burden of Proof." (Wigmore on Evidence, 3rd ed. vol. IX, sec. 2486, p. 276.)

"In short, in order to get to the jury on the issue, and bring into play the other burden on proof (in the sense of non-persuasion of the jury), both parties alike *must first satisfy the judge that they have a quantity of evidence fit to be considered* by the jury, and to form a reasonable basis for the verdict. This duty of satisfying the judge is peculiar in its operation because if it is not fulfilled, the party in default loses, by order of the judge, and the jury is not given an opportunity to debate and form conclusions as if the issues were open to them. The burden of the issue and the duty of going forward and with the evidence are two very different things. The former remains and the party affirming a fact in support of his idea and does not change at any time throughout the trial. The latter may shift from side to side as the case progresses, according to the nature and strength of the proofs offered in support or denial of the main fact to be established. *Bridge Corp.* v. *Butler*, 2 Gray (Mass.) 130. The burden of proof continues to rest upon the party who either as plaintiff or as defendant, affirmatively alleges facts necessary to enable him to prevail in the cause. It is required of him who asserts such facts to establish them before he can become entitled to a verdict in his favor; and, as to these matters, he constantly has the burden of the issue, whatever may be the intervening effect of different kinds of evidence or evidence possessing under the law varying degrees of probative force. *Smith* v. *Hill*, 232 Mass. 188, 122 N. E. 310, 2 ALR 1667." (*Spear* v. *Merchants' Bank & Trust Co.*, 188 N. C. 534, 125 S. E. 398.) "Burden of Proof—Secondary Meaning." (Wigmore on Evidence, 3rd ed., vol. IX, sec. 2487, p. 279.)

VIII.

The petitioner was entitled to a review of his proceeding in the Court of Appeals. The integrity of the Fifth and Fourteenth Amendments to the Constitution of the United States, providing that "no person . . . shall be . . . deprived of his life, liberty or property without due process of law," required that a *full* review of petitioner's proceeding be given by the Courts. Petitioner has been deprived of his constitutional rights, encompassed in the due process clauses, of the Fifth and Fourteenth Amendments.

> "The test is said to be whether, upon a review of the record, it sufficiently appears that the rights of the complaining party have been injuriously affected by the error, or that he has suffered a miscarriage of justice. (*Hays* v. *Viscome*, 122 Cal. App. 2d 135, 264 P. 2d 173, 39 ALR 2d 1435; *Parker* v. *Roberts*, 99 Vt. 219, 131 A. 21, 49 ALR 1382.) The fact that the record as it stands may show that the evidence preponderates heavily in favor of the appellee does not foreclose consideration on the part of the reviewing court of any error or irregularity committed at the trial (*Pilgrim* v. *Haas*, 118 Mont. 431, 167 P. 2d 339), and for the purpose of determining whether or not the appellant has been injured, it is proper to look at the whole record, and not to that part only which precedes and includes the particular exception under consideration. (*Bates* v. *Rentz*, 262 Ala. 681, 81 S. 2d 349; *Pease* v. *Golightly*, 168 Okla. 582, 35 P. 2d 469, 94 ALR 956; *State* v. *Britton*, 27 Wash. 2d 336, 178 P. 2d 341.)" (5 Am. Jur. 2d sec. 783, p. 225.)

IX.

This Court has held that a judicial decision itself can violate due process of law. (*Brinkerhoff-Faris Trust & Savings Co.* v. *Hill*, 281 U. S. 673, 50 Sup. Ct. 451, 74 L. Ed. 1107; *Mooney* v. *Holohan*, 294 U. S. 103, 55 Sup. Ct.

340, 79 L. Ed. 791; *Brown* v. *Mississippi*, 297 U. S. 278, 56 Sup. Ct. 461, 80 L. Ed. 682; *Hansbury* v. *Lee*, 311 U. S. 32, 61 Sup. Ct. 115. It has also held that the courts have violated other constitutional provisions by the application of a rule adopted by judicial precedent where the rule was invalid in origin or unjust in application. For example: *Erie Railroad* v. *Tompkins*, 304 U. S. 64, 58 Sup. Ct. 817, 82 L. Ed. 1188 (repudiating the doctrine of *Swift* v. *Tyson*); *McNabb* v. *United States*, 318 U. S. 332, 63 Sup. Ct. 608, 87 L. Ed. 819; and *Anderson* v. *United States*, 318 U. S. 332, 63 Sup. Ct. 608, 87 L. Ed. 819 (repudiating the doctrine that confessions elicited during restraint are not excluded from evidence for all purposes); and *United States* v. *South-Eastern Underwriters Association*, 322 U. S. 533, 64 Sup. Ct. 1162, 88 L. Ed. 1082 (repudiating the doctrine of *Paul* v. *Virginia*, 8 Wall. (75 U. S.) 168, 19 L. Ed. 357, that an insurance business conducted across state lines is not interstate commerce.)

The record in this case before this Court amply demonstrates the violation of due process, resulting in the miscarriage of justice to petitioner. The test is:

> "In determining what is due process of law, regard must be had to substance, not to form." (*Chicago B. & Q. R. R.* v. *Chicago*, 166 U. S. 226, 235.)

X.

The opinion of the Court of Appeals makes no mention of the circumstances under which petitioner filed his memorandum. Appendix "B". As a result of a discussion had between the judges and the petitioner, during the oral argument, a satisfactory means of bringing parts of the record referred was agreed. An examination of the memorandum points out unequivocally, that timely objections were made to the introduction of newspaper articles and

other inadmissible evidence which composed the entire defense of the defendant: justification. Under the law, the purported evidence offered by defendant and admitted by the trial court, does not constitute justification.

Without this improper evidence, defendant had no evidence to present in defense of its libel *per se*. Petitioner was aware of this, and objected most strenuously and continuously, but to no avail.

XI.

The trial court refused to permit petitioner to address the jury, although petitioner was represented by counsel. It is respectfully suggested that petitioner had a right, as a litigant, to address the jury, and petitioner has found no prohibition against his so doing.

XII.

It is urged upon this Honorable Court to consider the petitioner, as an individual, who was pitted against the onslaught of a reckless, careless and admitted libel, and the "power of the press". If the press has a duty and makes its claim for freedom of expression, it also has a reciprocal responsibility for what it prints. Unbridled freedom becomes licensed lawlessness. This Honorable Court, in the humble opinion of petitioner, should not permit any entity to so conduct itself.

This is the essence of this petition, for left undisturbed, the omnipotence of the press becomes an actuality. It is respectfully urged that this Honorable Court, take this opportunity, to remind the press, that it is accountable for what it prints.

CONCLUSION.

It is respectfully submitted that the questions raised are of such legal significance to the proper administration of the law, that there should be a judicial determination as to how far afoul of the law can the press libel people with impunity.

Justice cannot be rationed or curtailed. The very first Amendment to the United States Constitution providing, "Congress shall make no law abridging the freedom of speech, or of the press," has a corresponding responsibility. Freedom of the press, unabridged and without responsibility, poses a serious threat to our American way of life. To permit the decision of the lower Court to stand would be tantamount to the denial of due process of law and result in a serious miscarriage of justice.

Therefore, the reasons hereinabove mentioned require a reversal of the decision of the court below.

Accordingly, petitioner prays that a Writ of Certiorari issue to review and reverse the verdict and the judgment of the courts below.

Respectfully submitted.

ABRAHAM TEITELBAUM,
Attorney Pro Se, Petitioner.
30 North La Salle Street,
Chicago 2, Illinois.

APPENDIX "A".

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit.

No. 13885 September Term, 1962 January Session, 1963

Abraham Teitelbaum,
Plaintiff-Appellant,
vs.
The Curtis Publishing Company,
a Pennsylvania corporation,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

March 1, 1963

Before HASTINGS, *Chief Judge*, and SCHNACKENBERG and KILEY, *Circuit Judges*.

SCHNACKENBERG, *Circuit Judge*. Abraham Teitelbaum, plaintiff, has appealed from a judgment for defendant in plaintiff's action for libel against The Curtis Publishing Company, a Pennsylvania corporation. The complaint alleges that, in an article in the Saturday Evening Post, defendant maliciously published of and concerning plaintiff:

> "MICKEY COHEN WAS HANDLING $600,000.00 WORTH OF BETS A DAY, AND MANY EASTERN HOODLUMS—INCLUDING SUCH DISTINGUISHED THUGS AS ABE TEITELBAUM, BEN

JAMIN (BUGSY) SIEGAL, ABE (LONGY) ZWILLMAN, AND JOE ISCA, HAD MOVED WESTWARD TO ENJOY THE OUTDOOR LIFE."

The complaint stated that the words were false and defamatory and injured plaintiff in his reputation, wherefore he prayed judgment for one million dollars.

A responsive amended answer having been filed, followed by a reply by plaintiff, a trial was had before a jury, which found defendant not guilty. Plaintiff's motion for a new trial was denied.

The amended answer admitted the publication and alleged four defenses: truth, fair comment upon matters of public interest, words not libelous *per se*, and qualified privilege of material taken from a report of a governmental agency.

Plaintiff states that there really is only one issue and that is, "Are the words 'Thug' and 'Hoodlum' true as to Appellant who is a member of the legal profession and an officer of this Honorable Court?"

He asserts in his brief that the district judge committed error in receiving in evidence newspaper articles; that the questions propounded to plaintiff by counsel for defendant at the trial attempted to embarrass him unjustly as a lawyer, and the methods used and innuendoes made by defendant's counsel confused the jury as to what was fact and what was not. Furthermore he asserts that there was no competent evidence in the record to justify a verdict of "not guilty" nor did defendant sustain the burden of proving the truth of the article as having been printed with good motives and without malice.

Since the oral argument on this appeal, although plaintiff is represented in this proceeding by a member of the Illinois bar, he has filed in the clerk's office an affidavit and memorandum in which he "prays the indulgence of this

Honorable Court to *read the entire record* of the proceedings in the Court below." (Italics supplied.)

The filing of said affidavit and memorandum was undoubtedly occasioned by the fact that, during oral argument, this court called attention to the fact that plaintiff's appendix, filed pursuant to rule 16 (b) of this court, failed to set forth those parts of the record upon which errors were assigned. Rule 16 (b) provides:

> *Contents of Appendices.* The appendix to the main brief of the appellant or petitioner shall contain the judgment, decree, or order appealed from or sought to be reviewed or enforced * * * and such other parts of the record as are deemed necessary by the appellant or petitioner fairly to present the issues on appeal. * * * In all appendices, the evidence may be abstracted or reduced to narrative form. If appellant or petitioner raises a question of the sufficiency of the evidence to support a finding, ruling, order, verdict or judgment, he shall include in the appendix all evidence pertinent thereto.

In *Chicago & Eastern Illinois Ry. Co.* v. *Southern Ry. Co.*, 261 F. 2d 394, 400 (1958), we made it plain

> * * * that plaintiff's failure to include in its appendix filed in this court said parts of its exhibit 3, pursuant to our rule 16 (b), 28 U. S. C. A., would justify our refusal to consider the alleged error involved. * * *"

In *Sparrow* v. *Yellow Cab Co.*, 273 F. 2d 1 (1959), at 3, we said:

> "* * * This requires us to look to the evidence in this case in order to determine this issue.
>
> "In this connection, defendant aptly points out the requirements of Rule 16 (b) of the Rules of this circuit. * * *.
>
> "We have examined plaintiff-appellant's appendix with reference to the evidence on which he relies for reversal and a new trial. We find it completely wanting.

in this regard. There is, in effect, virtually no compliance with our Rule 16 (b).

* * * * *

"We are not required to resort to the record to find a basis for reversal. Yet, in order to appraise the testimony within the scope of our appellate review, that is what we would have to do here. Plaintiff, an admitted perjurer, seeks a new trial at our hands in order that he may have a second chance to tell the truth. Under such circumstances we feel no compulsion to search the record for him in order to give him this relief. * * *

"We hold that, because of the failure of appellant to comply sufficiently with Rule 16 (b) of the Rules of this court in the preparation of the appendix to his brief in this appeal, we cannot say that there was sufficient evidence of defendant's negligence, looking at it in the light most favorable to plaintiff, to warrant sending this case to the jury."

We thereupon affirmed the judgment of the district court.

In the absence of an adequate appendix setting forth the proceedings and evidence in the district court, we are constrained by the heavy and increasing pressure of pending business in this court to refuse to search the record, which consists of 886 pages, in order to find whether plaintiff is entitled to a reversal of the judgment of the district court. For that reason that judgment is affirmed.

AFFIRMED.

APPENDIX "B".

IN THE UNITED STATES COURT OF APPEALS.
For the Seventh Circuit.

No. 13885.

ABRAHAM TEITELBAUM,
Plaintiff-Appellant.
vs.
THE CURTIS PUBLISHING COMPANY, a corporation,
Defendant-Appellee.

MOTION AND AFFIDAVIT OF PLAINTIFF-APPELLANT, FOR LEAVE TO FILE INSTANTER MEMORANDUM IN SUPPORT OF ORAL ARGUMENT.

Now comes ABRAHAM TEITELBAUM, Plaintiff-Appellant and of Counsel of record, in this cause, moves this Honorable Court for permission to file instanter the accompanying memorandum in support of the oral argument, and has filed his Affidavit herewith in support thereof.

ABRAHAM TEITELBAUM,
Abraham Teitelbaum,
Plaintiff-Appellant,
Of Counsel.

IN THE UNITED STATES COURT OF APPEALS,
For the Seventh Circuit.

No. 13885.

ABRAHAM TEITELBAUM,
Plaintiff-Appellant,
vs.
THE CURTIS PUBLISHING COMPANY,
a corporation,
Defendant-Appellee.

AFFIDAVIT.

UNITED STATES OF AMERICA,
STATE OF ILLINOIS,
COUNTY OF COOK, } ss.

To the Honorable Judges of the United States Court of Appeals:

ABRAHAM TEITELBAUM, being first duly sworn on oath, deposes and says that the following facts, subscribed to by him, are true in substance and in fact.

1. That Plaintiff-Appellant is a duly licensed attorney practicing in the City of Chicago, Illinois, and is a member of the Bar admitted to practice before this Honorable Court for approximately thirty-two years.

2. That due to his involvements with the Internal Revenue Service of the Treasury Department, he was ren-

dered impecunious, and was therefore financially unable to print the exhibits and other portions of the record.

3. That Appellant prays the indulgence of this Honorable Court to read the entire record of the proceedings in the Court below.

4. That at the time of oral argument in this Court, one of the Honorable Judges asked Mr. Sidney Tepper, attorney for Appellant, whether he made objections to the entry of the various exhibits into the record, and whether the Appendix showed the same.

5. Appellant has prepared a memorandum in support of his oral argument and prays that this Honorable Court enter an Order granting him leave to file the same.

6. Appellant has pointed out in the accompanying memorandum portions of the transcript proving that objections to the entry into evidence were strenuously and repeatedly made during the trial, but same were overruled by Judge Julius J. Hoffman, Trial Judge.

s ABRAHAM TEITELBAUM.
Abraham Teitelbaum,
Plaintiff-Appellant,
Of Counsel.

Subscribed and sworn to before me this 24th day of January, A. D. 1963.

s RUTH H. BLOCK,
Notary Public.

IN THE UNITED STATES COURT OF APPEALS,
For the Seventh Circuit.

No. 13885.

ABRAHAM TEITELBAUM,
Plaintiff-Appellant,
vs.
THE CURTIS PUBLISHING COMPANY,
a corporation,
Defendant-Appellee.

MEMORANDUM IN SUPPORT OF ORAL ARGUMENT OF APPELLANT.

Appellee states in his brief on page 7 that plaintiff cannot raise here the question of the sufficiency of the evidence in support of the defense of truth. This statement is not the fact, and neither is it the law. The fact is that no evidence in support of Appellee's defense of truth was made. The burden of proof admitted by Counsel for Appellee was upon them, and on page 22 of his brief he states, "The newspaper clippings admitted into evidence were not offered to prove the truth of the matters stated therein." This is inconsistent with Counsel for Appellee's statement made to this Honorable Court.

Counsel for Appellee in his brief on page 25 stated, "The one alleged error which the plaintiff may properly raise in this Court is the giving of the instruction as to nominal damages. That is the only instruction now complained of which was objected to at the trial."

It is respectfully suggested that the offering of such an instruction is an admission of guilt which standing alone justifies a reversal of this cause.

The following excerpts of the transcript of the proceedings conclusively show that Counsel for Appellant made strenuous and repeated objections to the introduction into the evidence by the Trial Judge of the exhibits as to newspapers, crime study report, Senate report, and the income tax records of Appellant tendered by Counsel for Appellee.

The Appendix, beginning on page 19, shows the various points relied upon by Appellant for review by this Honorable Court. This is part of the record before this Court.

On page 199 of the transcript:

> *Mr. Barrett:* I have marked as Defendant's Exhibit =2 for identification the verbatim transcript of that session and I offer it at this time.
>
> (Your Honor, Senate Committee Report.)

Page 200:

> *Mr. Tepper:* We will object strenuously to any exhibit being offered in this fashion.

Page 204:

> *The Court:* Over the objection of the plaintiff, the Court will admit into evidence Defendant's Exhibit =2 for identification.

Pages 230-231 (Newspapers.):

> *Mr. Barrett:* At this time, your Honor, I offer Exhibits =1A, 3A, 4A, and 6A, which are negatives of the positive of the same number which I showed you.
>
> *The Court:* Any objection?
>
> *Mr. Tepper:* It goes to the materiality. . . . I will object to it.

Page 232:

> *The Court:* Over the objection of Plaintiff the Court will admit into evidence Defendant's Exhibits 1A, 3A, 4A, and 6A.

Page 241:

Mr. Barrett: At this time I offer Exhibit 5A, your Honor.

The Court: Now you may state your objection.

Mr. Tepper: Same objection . . .

The Court: Over the objection of Plaintiff . . .

Page 299:

Mr. Barrett: I offer this in evidence, your Honor, Defendant's Exhibit 31.

The Court: Do you object to it?

Mr. Tepper: I want to look at it, myself, Judge.

Page 301:

Mr. Tepper: I don't see the materiality of this or any other newspaper . . .

On Page 376:

Over the objection of the Plaintiff, the Court will admit into evidence Defendant's Exhibit 23 for identification as Defendant's Exhibit 23.

On Page 382:

Over the objection of Plaintiff the Court will admit into evidence Defendant's Exhibit 19 for identification as Defendant's Exhibit #19.

On Page 392:

Over objection of Plaintiff Court will admit Defendant's Exhibit #45.

On Page 410:

I overrule Plaintiff's objection to Defendant's Exhibit 26 and it is admitted into evidence over the objection of the Plaintiff.

On Page 411:

Mr. Tepper: Limit it so that we may understand to show reputation?

The Court: I don't limit it at all. I take the exhibit into evidence.

On Page 431:

The Court: Over the objection of Plaintiff the Court will admit into evidence Defendant's Exhibit #33.

Page 484:

Mr. Barrett: At this time I would like to offer into evidence Defendant's Exhibit No. 12 and 12N.

Mr. Tepper: Again, Judge, this one talks about Morrelli.

Page 489:

The Court: Over the objection of the Plaintiff the Court will admit into evidence Defendant's Exhibit #49 for identification.

Page 501:

The Court: Over the objection of the Plaintiff, the Court will admit into evidence Defendant's Exhibit 16.

Page 508:

Mr. Barrett: I offer into evidence Defendant's Exhibit #43 for identification, which purports to be one of Mr. Teitelbaum's income tax returns . . .

Mr. Tepper: We will object . . .

Page 551:

The Court: Over the objections of the Plaintiff the Court will admit into evidence Defendant's Exhibit 41 for identification. (California newspapers.)

Page 556:

Mr. Barrett: I offer Defendant's Exhibit 47 into evidence.

Mr. Tepper: We object to it.

(California Crime Study Report.)

Page 567:

Mr. Tepper: It is not a legislative. I want to be heard. It is a crime study report, and it does not fall in the category of an authentic report like the Senate Committee did.

The Court: Over the objection of the Plaintiff, the Court will admit into evidence Exhibit #47.

Page 656:

Mr. Tepper: Yes, Judge. The same objections all the way through, immaterial, incompetent, don't establish . . .

The Court: I would say they were slightly material, Mr. Tepper, and competent. Therefore I overrule your objections and admit into evidence Defendant's Exhibits 50, 51, 52 and 53 (Deposition re: newspapers).

Page 657:

Mr. Tepper: I think I prior have made objections to these (income tax return for 1952) asking your Honor to limit the entry in evidence.

The Court: Over the objections . . . Exhibits #43 and #48 will be admitted.

Page 659:

Mr. Barrett: I now offer in evidence Exhibit #34.

Mr. Tepper: I object to an offer of a newspaper that no witness saw or spoke about . . .

The Court: Over the objections . . . Exhibit #34 will be admitted into evidence.

Page 668:

Mr. Tepper: May I make an objection at this time and move for a mistrial . . . .

The above is reproduced from the transcript of the evidence to prove that timely objections were made and noted. The impression given by Attorney for Appellee at the oral argument that no objections were made is not in keeping with the facts.

It is further respectfully urged that this Honorable Court has the right to go into the sufficiency of the evidence to support the verdict under the law of the State of Illinois, because a motion for a new trial was made, which is part of the Appendix, citing *Chicago B & Q Ry.* v. *Haselwood*, 194 Ill. 69; *Huber* v. *Van Schaack*, 368 Ill. 142.

Over 90% of the entire trial was the testimony of Appellant. Surely, the burden of proof being on Appellee was not discharged. The Answers to Complaint, and Answers to Interrogatories propounded by Appellant, which are part of the Appendix, clearly show that the burden of proof was on Appellee.

The conviction of Appellant for violation of Income Tax does not give any aid or comfort to Appellee to write an article in the Saturday Evening Post that Appellant, a lawyer, is a "thug" and a "hoodlum."

Respectfully submitted,

/s/ ABRAHAM TEITELBAUM,
Abraham Teitelbaum,
Appellant,
Of Counsel.

CERTIFICATE OF SERVICE.

I, Abraham Teitelbaum, Of Counsel, hereby certify that on Thursday, January 24, 1963, at the hour of 2 P.M., a true and correct copy of the Motion, Affidavit and Memorandum were served on the Attorneys for Appellee, Messrs. Mayer, Friedlich, Spiess, Tierney, Brown & Platt, attention Mr. Roger W. Barrett, at Continental Bank Building, 231 South La Salle Street, Chicago 4, Illinois.

/s/ ABRAHAM TEITELBAUM,
Abraham Teitelbaum,
Of Counsel.

Dated at Chicago, Illinois, January 24, 1963.

AMENDMENT V TO THE CONSTITUTION OF THE UNITED STATES:

> No person . . . shall be deprived of life, liberty or property without due process of law.

AMENDMENT VII TO THE CONSTITUTION OF THE UNITED STATES:

> In suits at common law . . . the right of trial by jury shall be preserved.

AMENDMENT XIV TO THE CONSTITUTION OF THE UNITED STATES:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the

United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TITLE 28, UNITED STATES CODE JUDICIARY AND JUDICIAL PROCEDURE, Section 1254. . . . Certiorari:

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon a petition of any party to any civil . . . case, before or after rendition of judgment or decree.

TITLE 28, U. S. CODE, SECTION 1254 (1):

Courts of appeal, certiorari, etc.

Cases in the court of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon a petition of any party to any civil . . . case, before or after rendition of judgment . . .

RULES OF THE SUPREME COURT OF THE UNITED STATES, 44 (2):

The appellant . . . shall be entitled to open and conclude the argument.

RULES OF THE U. S. COURT OF APPEALS:

16(b) The appendix of the main brief of appellant . . . shall contain . . . such other parts of the record as are deemed necessary by the appellant . . . fairly to present the issues on appeal.

INSTRUCTION "K":

The trial Judge, Julius J. Hoffman, gave the following instruction No. K to the Jury which reads in part as follows:

"If you find from the greater weight of all of the evidence that the plaintiff has sustained no actual damages, then your verdict for compensatory damages for the plaintiff should be in the amount of one dollar." (Pages 2 and 18, Appellant's Brief U. S. Court of Appeals).